

STATE OF MAINE
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION
BUREAU OF INSURANCE

IN RE: REVIEW OF AGGREGATE)
MEASURABLE COST SAVINGS)
DETERMINED BY DIRIGO) ORDER ON INFORMATION
HEALTH FOR THE FIRST) REQUEST
ASSESSMENT YEAR)
)
)
Docket No. INS-05-700)

The Superintendent issues this Order on Consumers for Affordable Health Care's ("CAHC") October 11, 2005 information request on the Superintendent's consultant, John Kelly of Compass Health Analytics, Inc. Pursuant to Insurance Rule Chapter 350(10)(B), "all parties have the right to serve informational requests upon any party." (Emphasis added.) The Superintendent and his deputies, staff, and consultants working with him on the hearing panel to assist in the adjudication of this matter are not "parties" as defined by Insurance Rule Chapter 350(1). The October 11, 2005 information request of Consumers for Affordable Health Care on the Superintendent's consultant, John Kelly of Compass Health Analytics, Inc., as a non-party is DENIED.

The Superintendent alternatively considers CAHC's filing in the context of a public record request under Maine's freedom of access laws, 1 M.R.S.A. §§ 401-410 (the "FOAA"). In this regard, inquiry numbers 2, 3, part of 4, 6, 7, and 8 seek the production of non-documentary narrative responses which are not properly available for public access and inspection under the FOAA and, therefore, are DENIED. CAHC inquiry numbers 1, part of 4, and 5 seek the production of documentary material which may be the subject of an FOAA request. The FOAA request is GRANTED as to inquiry number 1, with public record copies provided to all parties of the proposal, dated August 11, 2005, submitted by Compass Health Analytics, Inc. to the Maine Bureau of Insurance.

CAHC inquiry numbers 4, in part, and 5 seek documents related to the mental processes of the decision maker which is privileged under the law. A long line of cases, originating with *U.S. v. Morgan*, 313 U.S. 406, (1941), has established that inquiry into the mental processes of administrative decision makers is prohibited. Maine's Supreme Judicial Court has acknowledged the principle. *Carl L. Cutler Company v. State Purchasing Agent*, 472 A.2d 913, 918 (Me. 1984) (general rule abrogated only upon showing of bad faith or improper behavior strong enough to justify intrusion onto decision maker's province); *Frye v. Town of Cumberland*, 464 A.2d 195, 200 (Me. 1983), citing *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 420 (1971). Matters into which CAHC proposes to probe under inquiry numbers 4, in part, and 5 would require the Superintendent to disclose mental processes related to his quasi-judicial role of adjudicating this matter. Such an inquiry would be similar to deposing a judge regarding a forthcoming decision. The FOAA request is DENIED as to CAHC inquiry numbers 4, in part, and 5 because the requested material are not public records pursuant to the provisions of 1 M.R.S.A. § 402(3)(B).

PER ORDER OF THE SUPERINTENDENT

DATED: October 12, 2005


ALESSANDRO A. IUPPA, Superintendent